

SELF HELP FOR HARD OF HEARING PEOPLE, INC.
7910 Woodmont Avenue, Suite 1200
BETHESDA, MARYLAND 20814
(301) 657-2248 (V) 2249 (TT)
(301) 913-9413 FAX

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 26, 1997

Acting Secretary William F. Caton
Federal Communications Commission
1919 M Street N.W., Room 234
Washington, DC 20554

Dear Secretary Caton:

Re: FCC Notice of Proposed Rulemaking
Closed Captioning and Video Description of Video Programming
MM Docket No. 95-176

Enclosed are the original and eleven copies of the comments of Self Help for Hard of Hearing People, Inc. (SHHH) on the above referenced Notice of Proposed Rulemaking. The comments are also enclosed on disc for your convenience in providing alternate formats.

We appreciate the opportunity to comment on this very important issue and thank the FCC for their commitment in furthering access to telecommunications services for all Americans.

Sincerely,

Donna Sorkin
Executive Director

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of)
the Telecommunications Act of 1996)

MM Docket No. 95-176

**Comments of
Self Help for Hard of Hearing People, Inc.**

Introduction

Self Help for Hard of Hearing People, Inc. (SHHH) hereby submits comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) on Closed Captioning and Video Description, released January 17, 1997.

SHHH is a national educational organization representing people who are hard of hearing of all ages and degrees of hearing loss. Through a national office, five state associations and a network of 250 chapters and groups across the country, SHHH members work at the grassroots to increase communication access to enable the 26 million people who are hard of hearing to continue to function in mainstream society. Captioning is the critical link to their accessing television.

SHHH recognizes the current FCC's commitment to furthering closed captioning and is pleased with the progress being made towards implementation of Section 305 of the Telecommunications Act

of 1996. Following are our comments on the proposed rules.

Responsibility for Captioning (§ 28)

The FCC proposes that responsibility for captioning compliance should rest with video programming providers. SHHH agrees with this approach. Since the FCC has more enforcement clout with providers than with producers and since divided responsibility is not workable then requiring providers to be responsible is the most efficient way to enforce the rule. From a practical standpoint the producers will pay for the captioning if they wish their productions to be distributed. A provider can refuse to purchase programming that is not closed captioned. Ideally the rules will result in providers incorporating such requirements into their contracts with producers and owners. Whether this happens in reality remains to be seen. As the FCC points out, a further consideration for ensuring compliance using this model is that it is easier for consumers to contact video providers than to contact the producers in achieving compliance with the FCC rules.

Obligations as to Non-Exempt Programming - Transition Rules for New Programming (§ 40)

The FCC proposes a transition schedule of eight or possibly ten years to phase in captioning at a rate of 25% every two years. SHHH was disappointed by the length of time proposed. Some of our members seriously questioned, on hearing the timetable, whether they would be alive to see it.

SHHH agrees that it is not practical to mandate immediate captioning of all non-exempt video programming. We realize that a phase-in approach is necessary and in our original comments to the FCC's Notice of Inquiry (NOI) MM Docket No. 95-176 dated December 4, 1995 we supported requiring all new video programming within 2-3 years of the effective date of the rules. We would be willing to double our original request to five years but feel that eight or ten years is too long given a number of factors: the millions of households with television sets which can receive closed captioning; the millions of people who need it and can benefit from it; the wide availability and increasing cost effectiveness of captioning technology; the awareness by program providers and producers since February 1996, when the Telecommunications Act was passed, that captioning would be required; and, most importantly, the undue burden provision. Given these factors eight or ten years is too long and we request that the FCC propose a transition schedule of no more than five years that will phase in captioning of all non-exempt programming.

As SHHH understands it, there appears to be a loophole in the proposed rulemaking with respect to the application of the phase in requirement. Currently captioned programs in excess of the requirements would apparently meet the requirement, deferring additional captioning into the future. Under the proposed transition rules for new programming, we might not see an increase in the amount of captioned programming on the major networks for 7 years and might actually see a decrease instead. Each of the major

broadcast networks (NBC, ABC, CBS, PBS, FOX) are presently in attainment of at least the year-6 goals. SHHH suggests that the goal of 25% be based on increased captioning, over and above what is currently being provided and not on total captioning.

As the FCC points out in ¶ 42, market forces will not be sufficient to ensure the closed captioning of some types of public interest programming such as live local news, which may be less cost effective to close caption. Our members put a high priority on captioning of local news so that they can keep up with what is happening in their communities. People with hearing loss all around the country are vigorously advocating for captioning of all local news, preferably realtime captioned, but electronic newsroom captioned at the very least. The stations that are captioning their news often do it with corporate funding. We therefore support the FCC's contention that news reports and emergency broadcasts have a much bigger priority for captioning than entertainment and other programming.

While not directly subject to this NPRM, it would be comforting to have some assurance that Department of Education funding would be phased out as provider/producer funding responsibility is phased in. An abrupt cut off of Department of Education funding would have a catastrophic impact on the availability of captioning.

Obligations as to Non-Exempt Programming - Transition Rules for

Library Programming (§ 51)

The NPRM notes that some commenters suggest that no transition rule for old programming is required as the amount of captioning of previously published programming has been steadily increasing and the success of voluntary captioning efforts proves it unnecessary to require it. If providers are as progressive as they claim to be regarding captioning old programming, then the proposed 75% rule would not be burdensome. To maximize the accessibility of previously published programming, we propose that the transition program for library programming follow an eight year transition period as proposed for new programming and encompass, at the very least, 75% of the video library. We urge that any old programming selected to be distributed frequently and/or to a national audience be captioned.

We should not forget that many library programs are already captioned, but are aired without captions. Providers should be required to air any captions that exist.

Exemption of Classes of Programming and Providers Based on Economic Burden (§ 63)

There should be few, if any classes of programming granted blanket exemptions based on economic burden as the law provides for an undue burden protection already. If the FCC persists in including the exemptions suggested in the NPRM in the final rule there needs to be provision for a review of any such exemptions within a reasonable time period, but not to exceed two years. It

would not seem to be the intent of the law to have certain types new programming exempt forever. As broadcast and captioning technology progresses and captioning becomes more cost effective these exemptions would no longer be justified and should be revoked as appropriate.

Foreign language programming. (§ 72) Foreign language programming using a Latin-based alphabet should be captioned. In addition to serving significant population groups, such as the Spanish-speaking population in the U.S., English speakers, both hearing and hard of hearing, who are learning a foreign language, can benefit from this provision.

Programming that is primarily textual in nature. (§ 73) It is reasonable to include programming that is textual in nature within the exemptions. The key to determining whether the textual format is providing sufficient information to people with hearing loss is to evaluate the background audio track for content and whether or not it is duplicated in the text.

Cable access programming. (§ 74) SHHH believes this should not be exempt. PEG presents important governmental, educational and community information which people need to keep abreast of what is happening in their communities. Even though this type of programming operates on relatively small budgets there are creative funding possibilities already being used and therefore cable access programs should be captioned.

Home shopping programming. (§ 78) We agree that not all of the descriptive material provided by home shopping is currently available in textual form and therefore this programming should not be exempt from captioning. In addition many older people with hearing loss also have other medical conditions which prevent them from going out to shop and so this provides them with a very convenient service.

Interstitials and promotional advertisements. (§ 79) Caption viewers should have the same access to information about upcoming programs as everyone else. The problem right now is that interstitials are not captioned and people assume that the full program also will not be captioned. There needs to be some indication that the program will in fact be captioned even though the interstitial is not. If interstitials and promotional advertisements have to be included in the exemptions then the same information needs to be delivered in textual or graphic form.

Political advertising. (§ 80) Political advertising provides important information which allows people with hearing loss to participate in the political process, which is their right. Political advertising should not be exempt from captioning.

Fundraising activities of noncommercial broadcaster. (§ 81) Periodic textual graphics or repeated captioned messages are already being used successfully on certain stations to summarize the highlights of this type of fundraising activity and to allow

hard of hearing and deaf people to contribute.

Music programming. (§ 82) We agree that music videos should be captioned for all the reasons outlined by the FCC. Live performances should also be captioned as there is always an element of spontaneity and ad libbing by the performers which is what makes the atmosphere special and different from taped performances. Theme songs and lyrics, which are important to the enjoyment of the programming, should be captioned.

Weather programming. (§ 83) We agree that it would be inappropriate to exempt weather programming from captioning. Many of our members have indicated having access to this information is a top priority for concerns of health and safety.

Sports programming. (§ 84) If exemptions are granted for certain types of sports programming such as locally produced college or high school sports, it should be required that textual information be provided to update viewers with hearing loss on such key information as the score and the time remaining.

Exempt Classes of Video Providers (§ 85)

SHHH wholeheartedly supports the FCC's decision not to give a blanket exemption for classes of video providers for the reasons stated.

Exemptions Based on Existing Contracts (§ 86)

Exemptions based on pre-existing contracts may be necessary to avoid burdensome litigation. However, we can think of few, if any, valid reasons for a provision prohibiting closed captioning which is displayed only by the choice of the individual viewer.

Exemptions Based on the Undue Burden Standard (§ 89)

Exemptions based on the undue burden standard should be granted only on a case-by-case basis in response to petitions filed by an individual video service provider or program owner demonstrating undue burden. When determining undue burden the FCC should consider the four factors defined in Section 713(e) and grant an exemption only if the program would not air because of the cost of the captioning. We agree that exemptions granted under Section 713(d(3)) should be for one year only to allow the FCC to reevaluate the waiver to determine if it is still warranted.

Standards (§ 110)

The FCC's proposal to extend Section 76.606 requiring cable operators to deliver existing captions intact to all video program providers is an essential provision and one which SHHH wholeheartedly supports.

In our original comments SHHH was in support of the FCC setting minimal standards related to ensuring that captioning be adequate to fulfil its purpose. The quality of captioning is a matter of considerable importance to those viewing captions. However, the FCC states that is leaning towards not imposing

standards for the non-technical aspects of quality and accuracy of captioning (§ 111.) If minimal standards for the non-technical aspects of quality and accuracy are not imposed, there is a very real danger that poor quality captioning will result from caption contracts awarded to the lowest bidder. SHHH suggests that, at a minimum, the FCC review the need for such standards at intervals not exceeding two years during the phase-in of captioning regulations. An alternative solution would be to request an outside body, such as the National Court Reporter's Association (NCRA), to develop non-technical captioning standards for training, testing and certification of captioners. The NCRA already provides credentials to court reporters, many of whom take additional training to do captioning, and is therefore already set up to undertake this role.

Enforcement and Compliance Review Mechanisms (§ 122)

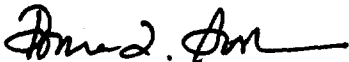
The complaint process adopted needs to be clear, straightforward and user friendly. The FCC should be the ultimate recipient of complaints concerning captioning in order for them to keep track of how well the rules are being implemented. However, we feel that viewers should first be able to direct complaints to the program provider for resolution. This can only be effective, however, if each program provider has well publicized contact information which should include TTY and email numbers, so that viewers can complain to the appropriate person and receive a timely response by the program provider to resolve the captioning problem. The FCC should set limits on how much time the provider would be

given to resolve the complaint before it would be forwarded to the FCC where normal complaint channels should be available.

We support requiring the video programming providers to demonstrate their compliance by placing information regarding the amount of closed captioning programming they distribute in a public file.

We appreciate the opportunity to comment on this very important issue and thank the FCC for their commitment in furthering access to telecommunications services for all Americans.

Respectfully submitted,



Donna Sorkin
Executive Director, SHHH

Self Help for Hard of Hearing People, Inc.
7910 Woodmont Avenue, #1200
Bethesda, Maryland 20814

February 24, 1997